

75. By Order of the Commissioner dated December 12, 1996, AT&TVI was to provide information about its drilling materials and drilling procedures, as well as the timing and cause of the spills and the Order virtually tracked the language of the CZM November 26, 1996 Request for Information.

76. AT&TVI was also required to submit a comprehensive Corrective Action Plan to DEP for approval. By the terms of the December 12, 1996 Order, the CAP specifically included a complete site assessment, a clean up plan, a plan for short term monitoring of the clean up, and a long term monitoring plan.

77. The Department subsequently agreed that AT&T's responses to CZM's letter of November 26 would be considered in response to the December 12, 1996 Order.

78. AT&T provided to the Department copies of December 6, 1996 letters to Bioimpact and A&L telling those contractors to comply with Requests for Information from the Department, and provided no other information regarding its contractors. Simultaneously, it informed its contractors that in the event it was served with a Request, potentially responsive documents were to be provided to AT&T's attorneys.

79. Additional guidance regarding clean up was provided to AT&TVI by letter of December 20, 1996 from DPNR Commissioner Beulah Dalmida-Smith to Barry Florence, President and CEO of AT&TVI at that time. "[R]emoval of the Bentonite ('the mud') from the sea floor" was identified as a primary objective of the corrective action plan.

80. By letter dated January 1, 1997, AT&T acknowledged DEP's conclusion that all discharged drilling material at its St. Croix drilling site had to be removed, but argued against the removal of all of the material. Exhibit 1 to the letter was a

letter from Mr. Florence to CZM of December 16, 1996 containing an alternative plan which called for leaving all the drilling mud in place.

81. On January 15, 1997, the CZM Committee met, with AT&TVI present, and voted to delegate enforcement of all water pollution control violations to DEP, and to defer to DEP regarding the Drilling Mud Clean-Up.

82. On April 14, 1997, AT&T laid its C-1 cable directly on the deep reef in at least three places, in the face of its claims that it could lay cable with almost absolute accuracy. Past the reef, the cable was laid outside the permitted easement over 1.2 miles of submerged lands in deep water.

83. From January 25, 1997 through September 3, 1997, AT&T continued to argue that it would not be environmentally prudent to remove all of the drill mud on the ocean floor and failed to notify the Department that chemical testing in February 1997 confirmed the presence of petroleum products in the discharged drilling fluid. DEP devoted many hours of its staff members' time to providing numerous responses to AT&T's inquiries and incomplete submissions.

84. U.S. Fish and Wildlife Service ("USFW"), by letter to the U. S. Army Corps of Engineers dated March 19, 1997, agreed with the position taken by DEP, that buried drilling material should be removed. USFW suggested that areas of mud covered by sand or seagrass should be located by probing the sea floor. "If there is buried mud, then it should be uncovered and dredged out."

85. By orders dated September 3, September 4, September 10, and September 11, 1997, AT&T was jointly directed by DPNR and ACOE to conduct an initial clean up drilling material on the sea floor at Butler Bay, St. Croix.

86. AT&T had repeatedly represented to DPNR that the drilling material consisted only of Bentonite, an inert material, and sea water;

87. Sampling of the drilling fluid deposits revealed to the Department the presence of oil and grease and total petroleum hydrocarbons. James R. Payne, Ph.D., a preeminent authority on marine-pollution issues, and the measurement and significance of polynuclear aromatic hydrocarbons (PAH) in seawater, sediments, and the tissues of marine organisms, has determined that the high Total Petroleum Hydrocarbon (TPH) content and the low molecular weight Polycyclic Aromatic Hydrocarbon (PAH) composition of sediments collected from the North Emergence Zone indicate the presence of petroleum product, e.g., lube oil, diesel fuel. The presence of these compounds in drilling pipe recovered from the site clearly indicates the association between petroleum product in the spilled drill mud and the drilling operation.

88. On January 6, 1998 an inspection of the site by DPNR showed that pockets of drilling material up to 20 inches deep remain in the emergence zones. Clean up activities, including debris disposal, shipping off-island of recovered drilling mud, and anchor removal, continued through the month of January, 1998.

89. On January 17, 1998, Rick Winfield, Dexter Freeman and Jim Rayot of AT&T conferred with Bruce Green of DPNR regarding sampling and characterization of the drilling material that remained on the sea floor. During these activities, Mr. Green, DPNR's clean up monitor, discussed with AT&T representatives on site the fact that the protocols for clean up inspection and long term monitoring had to be proposed to DEP.

90. Until hearings in February, 1998 before CZM, no notice was provided to the Government of the Virgin Islands that AT&TVI had reached an agreement with the Navy in September of 1994 to change the C-1 Cable route from the route

shown on the maps submitted with AT&TVI's application for a CZM permit and easement on August 22, 1994.

91. AT&T responded on February 17 and February 20, 1998 to DEP's request that it locate and delineate remaining mud, disputing the existence of any pockets and the identification by DEP of the pockets as drilling material.

92. AT&T refused to accept responsibility for the pockets remaining after its alleged clean up of the emergence zones until October 1998, after sampling confirmed that those pockets indeed contained drill mud.

93. On September 21, 1998 patches containing AT&T drilling material, some as large as 40 feet across, were exposed at the 60 and 80 foot depths, by Hurricane Georges. The patches resembled in appearance and feel those present in the emergence zones prior to the cleanup and those examined in the same location during the previous year.

94. These observations were made by DPNR in spite of the fact that AT&T had committed to monitor the spill site for the presence of mud resulting from extreme weather events.

95. Further observations, based upon AT&T surveys, indicated larger remote patch deposits as far westward as the deep reef at the 80-foot depth contour. AT&T representatives indicated that the material continued out over the deep reef, and down the steep drop off at approximately 100 feet. These deposits were described as boat size.

96. AT&T divers first acknowledged the presence of the large patches at the 80 foot contour on October 6-8, 1998, during the joint DPNR/AT&T dive to the site. This information should have been reported to DPNR when observed.

97. AT&T representative indicated to DPNR during the October dives that the 80 foot deposits appeared to be an extension of those found at 60 feet.

98. On November 7, AT&T and DPNR located additional mud deposits over the deep reef at depths in excess of 100 feet.

99. To date, AT&T refuses to take responsibility for the newly exposed patches, even though its November 1996 clean up bid documents stated that the drilling material extended out to the 65-foot depth contour and no clean up was conducted beyond the 55 foot depth.

100. None of the environmental studies conducted by AT&T and reported in the EAR identified the area of the emergence zones as depositional in nature or detected the presence of mud deposits prior to AT&T's development of its cable facility.

101. AT&T has acknowledged throughout its filings with the Department after the violations were discovered that the mud flows into depressions, that it flows in the general direction of the northwest, and that it flows "downhill" along the depth gradient, both over and through the natural sand surface.

102. Despite AT&T efforts to identify like deposits in Butler Bay or otherwise in the environs of St. Croix to substantiate their presence as a regional phenomenon, none were found.

103. Clusters of mud patches were found only at the 60-foot depth contour, along a downhill gradient and west of the emergence zones where drill mud was originally observed, and again at the 80-foot contour in the same compass direction. Random patches have been located between the emergence zones and the artificial reef, along the route that discarded drill pipes were towed to be dumped at the reef and artificial reef after the drilling was complete in 1996.

104. By letter of December 12, 1996 from Barry Florence, AT&TVI claimed that it had used 266,000 pounds of API gel and 190,700 pounds of salt gel in the drilling operation. AT&T has since alleged that it is unable to provide the other information requested by the Department, including the ratio of raw drilling material to water or the actual quantity of drilling fluid used, because its drilling contractor was uncooperative. Relying on the MSDS's provided by AT&TVI on December 12, 1996, the Department obtained copies of Parchem, Inc. invoices to A&L Underground for materials used on the AT&TVI project. Those invoices reveal the following:

- a) The total amount of Parchem API gel used was 336,000 pounds (168 tons), compared to 266,000 reported by AT&T. The amount of Parchem salt gel used in the project was 235,700 pounds (117.8 tons), as opposed to the 190,700 pounds reported by AT&T. This one supplier provided over 100,000 pounds more drilling medium than AT&TVI has reported for the entire project, and AT&T has indicated there were other suppliers.
- b) The technical data sheet for Pargel, the API gel used in the project, shows that it will yield a minimum of 9,240 gallons of API drilling fluid to one ton of material.
- c) AT&T mixed a minimum of 1,552,320 gallons of API drilling fluid at its project at Butler Bay, and, assuming the ratio is similar for the salt gel, or Attapulgate, another 1,088,000 gallons of salt gel. AT&T has stated that none of the material was returned. At least 2,500,000 gallons of drilling medium

were released, either into rock fractures or the Territorial waters.

- d) Two thousand pounds of a material called Envis was ordered, delivered to the site, and not returned for credit, but its use was never reported to the Department by AT&T.

105. According to Dr. Esther Peters, a leading marine biologist who specializes in tropical ecology, excessive exposure to drill muds is detrimental to coral organisms. The volume of the drilling mud discharges into Butler Bay is considered excessive. Hence, inshore and deep reef benthic organisms were and continue to be potentially exposed to drill muds and those containing petroleum products. Muds containing oils inhibit the ability of corals to effectively remove particulates from the colony surface. Corals exposed to oils in water are known to exhibit abortion effects, abnormal egg development, and reduction of calcification.

106. The Department has documented at least 57 instances of reaming and/or back reaming between April 21 and September 25, 1996 from the daily directional drilling reports not produced until October 16, 1998, and other AT&T records and diaries obtained after the violations were discovered.

107. At the conclusion of the drilling, AT&T had drilled at least four more holes than were permitted and at least two holes were more than three times as large as those permitted.

108. Endangered and threatened species including the Hawksbill, Leatherback, and Green Sea Turtles, the Brown Pelican, the Roseate Tern, the Least Tern, and the White Tailed Tropic Bird, some of which were acknowledged in AT&T's EAR, feed in the area.

109. Queen conch, a commercially viable species, were suffocated in the spill. Further, the conch population was already under severe stress from over-harvesting and the quantities of mud that were released destroyed a large area of the limited conch habitat available on St. Croix.

110. When drilling terminated, fifteen pieces of drill pipe and PE pipe, up to one thousand feet long, were intentionally discarded into near shore waters, on the Territory's submerged lands at the bottom of Butler Bay, with AT&T's approval. Some were left at the site. Others were towed one half mile away and dumped on the artificial reef and the deep reef. Some were "lost" during the tow.

111. A review of the monthly monitoring reports, filed with the Department anywhere from a week to a month after the activity reported, showed that the permit limits for NTU's and/or TSS were exceeded on the following days: October 25 and 28, November 3-5, 7, 11, 12, 18, 19, 24, 25, 27, 29, and December 4, 6, 18, 1995; January 6, 11, 12, 14, 31, February 8, 19, 21, 24, 25, March 3, April 20, May 7, 8, 28, June 15, 22, July 9, 10, 11, 16, 20, 30, 31, August 2, 5, 8, 19, 23, 27, September 7, 9, 10, 15, and October 4, 8, 10, 20, 28, 29, 1996. None of these permit exceedences were reported immediately, as the permits required.

112. After the department discovered the massive mud discharge and served the October 28, 1996 Cease and Desist Order, forty additional exceedences were reported on a relatively timely basis.

113. AT&T represented in its permit application documents that it was knowledgeable and experienced with regard to directional drilling. It was on site throughout the drilling project, closely monitored the drilling operation, and per its contract with the driller, had to approve all work.

114. Although AT&T has refused to produce all of its Daily Directional Drilling Reports, those that have been produced show that drill emergencies, larger hole sizes, reaming and back reaming were reported on a daily basis via e-mail by the AT&T Representative on-site to stateside managerial level AT&T employees, but never to CZM or to DEP.

115. In September and October, 1998, DPNR served Requests for Information on Respondent and seventeen other entities who had participated in the St. Croix cable facility project. In clear violation of the Commissioner's December 1996 Order, AT&T informed the Department, by letter dated September 29, 1998, that it had not "authorized" its contractors to provide responsive documents.

116. To date, AT&T has produced documents on behalf of only one contractor, A&L Underground, Inc.

117. Documents produced by AT&T confirm that prior to the Department's discovery of the drilling fluid discharged across the sea floor, AT&T made plans to cover it with sand.

III. STATEMENT OF LAW

Title 12 V.I.C. §902(l) defines development to mean "the placement . . . of any fill, solid material or structure on land, in or under the water; [and] discharge or disposal of . . . any liquid or solid waste . . ."

Title 12 V.I.C. §902(q) defines fill as "earth or any other substance or material . . . placed on a submerged area."

Title 12 V.I.C. §902(cc) defines submerged lands as "all lands in the United States Virgin Islands permanently or periodically covered by tidal waters up to,

but not above, the line of mean high tide, seaward to a line three geographical miles distant from the coastline of the United States Virgin Islands . . ."

Title 12 V.I.C. §903(a) states the finding of the Legislature that "to promote the public safety, health and welfare, and to protect public and private property, wildlife, ocean resources and the natural environment, it is necessary to preserve the ecological balance of the coastal zone, and to prevent its deterioration and destruction . . . and there has been uncontrolled and uncoordinated development of the shorelines . . ."

Title 12 V.I.C. § 903(b)(1) states that a basic goal for the coastal zone of the Virgin Islands is to "protect, maintain, [and] preserve . . . the overall quality of the environment in the coastal zone, [and] the natural and manmade resources therein . . . by managing [] the impacts of human activity and []the use and development of renewable and nonrenewable resources so as to maintain and enhance the long-term productivity of the coastal environment."

Title 12 V.I.C. §§903(b)(8) and (b)(9) provide that additional goals are to "conserve ecologically significant resource areas for their contribution to marine productivity and value as wildlife habitats, and preserve the function and integrity of reefs, marine meadows, salt ponds, mangroves and other significant natural areas"; and to "maintain or increase coastal water quality through control of erosion, sedimentation, runoff, siltation and sewage discharge".

Title 12 V.I.C. §906(b)(2) defines the environmental policies in the first tier to include "to protect complexes of marine resource systems of unique

productivity, including reefs, marine meadows . . . and other natural systems, and assure that activities in or adjacent to such complexes are designed and carried out so as to minimize the adverse effects on marine productivity, habitat value, . . . and water quality of the entire complex."

Pursuant to 12 V.I.C. §906(b)(10) "[s]ignificant erosion, sediment transport, land settlement or environmental degradation of the site shall be identified in the environmental assessment report prepared for or used in the review of the development, or described in any study, report, test results or comparable documents."

Title 12 V.I.C. §910(d)(6) provides that "[a]ny development approved pursuant to this chapter . . . shall be commenced, performed and completed in compliance with the provisions of the permits for such development . . ."

Title 12 V.I.C. §911(b) requires that applications for coastal zone permits that include occupancy or development of submerged lands shall include, *inter alia*, an environmental assessment report and a "complete and exact written description of the proposed occupancy or development for which the permit is sought, defining construction methods. . ."

Title 12 V.I.C. §913(b)(5) provides that violation of any term or condition of any coastal zone permit issued or approved pursuant to this chapter shall be ground for revocation or suspension thereof.

Title 12 V.I.C. §913(c)(1) provides that any person who violates any provision of this chapter, or any regulation or order issued hereunder, shall be subject to a civil fine not to exceed ten thousand (\$10, 000) dollars.

Title 12 V.I.C. §913(c)(2) states that any violation of this chapter or any regulation or order issued hereunder shall constitute a misdemeanor.

Title 12 V.I.C. §913(c)(3) provides that in addition to any other penalties provided by law, any person who intentionally and knowingly performs any development in violation of this chapter shall be subject to a civil fine of not less than one thousand dollars nor more than ten thousand dollars per day for each day during which violation occurs.

Title 12 V.I.C. §913(c)(5) grants the Commissioner of Planning and Natural Resources discretion to assess civil penalties administratively or to maintain a court action.

Title 12 V.I.C. Rules and Regulation §913-1(a)(1) specifically defines violations of the CZM Act to include "[u]ndertaking or in any manner threatening to undertake, any activity that may require a Coastal Zone Permit without first securing such a permit . . . [a]ny activity which is inconsistent with or in violation of a Coastal Zone Permit [and] [f]ailure to timely submit to the Committee or the Commissioner, in accordance with the provisions of a CZM permit, any required information, of failure to submit such information in a complete and accurate fashion."

Title 12 V.I.C. Rules and Regulation §913-3(f)(2) states that "[i]n assessing a civil penalty, the Department takes into account information available to the Department concerning any factor to be considered under the applicable statute, and any other information that justice or the purposes of the statute require."

Title 12 V.I.C. Rules and Regulation §913-3(k) provides that "[f]actors to be taken into account in assessing a penalty, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior offenses; and such other matters as justice may require."

IV. CONCLUSIONS OF LAW

The Commissioner has authority to institute this action and issues this Notice of Violation and Order.

The Respondent is a person within the meaning of Title 12 V.I.C. §913(b)(6) as defined in §902(v).

The Respondent knowingly released or allowed the release of drill mud into the marine environment in violation of section 6 of the special conditions established in Respondent's Coastal Zone Permit, CZX-28-94W and the Virgin Islands Water Quality Standards Title 12 V.I.C. §§185 and 186.

The Respondent's failure to timely and adequately report the release of the drill mud to DPNR violates Title 12 V.I.C. §910(e)(8), Title 12 V.I.C. Rules and Regulations §913-1(a)(3) and section 6(e) of the special conditions in Respondent's Permit No. CZX-28-94W.

Respondent's knowing and intentional use of reaming and backreaming constitutes development of submerged lands without a permit in violation of 12 V.I.C §911 and CZM Permit No. CZX-28-94W, §§5(e), (i) and (n).

Respondent's knowing and intentional failure to clean up the discharged drilling fluid at the completion of each conduit and its failure to attempt clean up are violations of §§5(e), (i) and (n) of Permit No. CZX-28-94W.

Respondent's knowing and intentional failure to have a vacuum device on site at all times during directional drilling constitutes a violation of Special Condition 6(d) of Permit CZX-28-94W.

By Respondent's own admission, it exceeded permit limitations for TSS and NTU's and such exceedences constitute violations of sections 6(e) and 6(f) of Coastal Zone Permit No. CZX-28-94W.

Respondent's intentional addition of petroleum products to the drilling fluid when the use of drilling clay and sea water were the only approved drilling media was a violation of §§5(e), (i) and (n) of Permit No. CZX-28-94W.

Respondent's knowing and intentional drilling of additional holes and of oversize holes and its failure to obtain a modification of its permits violated 12 V.I.C. §911, as well as CZM permit No. CZX-28-94W, §§2, 5(e), (i), and (n).

Respondent's intentional placement of fifteen drill pipes, PE pipes and drill stem on the sea floor, the deep reef, and the artificial reef constitutes development of submerged lands without a permit in violation of 12 V.I.C. §911 and discharge of a pollutant into the waters of the Virgin Islands without a permit in violation of 12 V.I.C. §185 (a).

Respondent's placement of its cable outside of its permitted easement on submerged lands belonging to the Territory violates 12 V.I.C. §911 and §5(n) of permit number CZX-28-94W.

In the face of the covenant in §6.11 of its EAR, Respondent intentionally failed to properly dispose of the waste oil generated by its project, a violation of Permit No. CZX-28-94W, §5 (n).

The Respondent's violation of the terms and conditions of its Coastal Zone Permits described herein is grounds for revocation or suspension of the permits pursuant to Title 12 V.I.C. §913(b)(5).

Respondent intentionally violated §5(n) of permit number CZX-28-94W in its failure to provide catchment basins for its above-ground petroleum piping and storage tanks located in the open.

Pursuant to Title 12 V.I.C. §913(c)(1) the Respondent is subject to a civil fine not to exceed ten thousand (\$10, 000) dollars for violations of the CZM Act.

Pursuant to Title 12 V.I.C. §913(c)(3) the Respondent is subject to a civil fine of not less than one thousand dollars and not more than ten thousand dollars for each day it knowingly or willfully violated the CZM statutes or regulations, its CZM permits and the orders issued pursuant to the CZM Act.

The Respondent is also subject to criminal penalties and civil actions for exemplary damages under Title 12 V.I.C. §913 9(c), paragraphs (2) and (4) respectively.

V. HISTORY OF PRIOR OFFENSES

Noncompliance with environmental laws and regulations and with permit terms and application procedures designed to protect the environment in the States of California and Maine is a part of the compliance history of AT&T Corp, the parent corporation of this Respondent. The violations are similar to those catalogued above with regard to the St. Croix project, and indicate a corporate-wide indifference to environmental protection and environmental laws.

A. CALIFORNIA

1. On October 2, 1992, American Telephone and Telegraph, Inc., entered into the "Consent Agreement Regarding Bentonite Discharges" with the State of California to settle "all civil and criminal claims" arising from the discharge into the Point Arena Creek, Moat Creek and the Garcia River of bentonite clay slurry, used as a drilling lubricant for directional drilling. In the Consent Agreement, AT&T admitted that it had agreed to use directional drilling under Point Arena Creek, Moat Creek and the Garcia River "because the areas were deemed to be environmentally sensitive due to the presence of endangered

species, species of special concern or other considerations." The drilling company on that project was Michels Pipeline Construction, Inc.

2. American Telephone and Telegraph amended its Certificate of Incorporation to change its name to AT&T Corp. on April 20, 1994.

3. On March 15, 1996, AT&T Corp. entered into an agreement with the California Department of Fish and Game that allowed AT&T to construct an underground fiber optic cable line under 111 identified streams. A specific term of the agreement was that it was "understood that the Department enters into this Agreement for the purposes of establishing protective features for fish and wildlife in the event this project is implemented."

4. By letter dated March 25, 1996, the California Regional Water Quality Control Board, noting that AT&T Corp. had agreed to use guided boring "to cross live streams to avoid or minimize impacts to riparian vegetation, water quality and fisheries resources," granted a conditional waiver of waste discharge for the project. The conditions imposed included conformance to Water Quality Objectives and immediate notification to the Regional Water Board of any spills.

5. By letter dated May 1, 1996, the California Department of Fish and Game gave AT&T Corp. notice of six separate releases of bentonite into four different streams between March 21 and May 1, 1996.

6. By letter dated June 11, 1996, the California Regional Water Quality Control Board responded to AT&T Corp's request "to allow minor releases into the stream provided the bentonite is contained to a small area and is picked by vacuum truck." The Board noted that "[a]lthough the bentonite is non-toxic (MSDS), the fine particulate matter may cover benthic organisms or impact fish spawning habitat," and expressed its concern that "spills continue to occur and

may impact surface waters." The request was granted, conditioned on "a monitor at the guided bore site during the complete drilling operation. At the first sign of a bentonite seep, spill response activities are to begin."

7. An estimated 3,000 gallons of bentonite was released by AT&T into the waters of the Pieta Creek in California between August 2 and 3, 1996. The California Department of Fish and Game ("CDFG") suspended AT&T's permit on August 7, 1996 as a result of the Pieta Creek spill and fifteen previous inwater bentonite spills. CDFG determined that AT&T Corp had failed to comply with the commitments made in its Spill Prevention and Response Plan, approved during the permitting process, when it continued boring even though spill containment had not been achieved. Bentonite was characterized by CDFG as a substance known to be harmful to fish and benthic invertebrates. It was also determined by CDFG that AT&T chose directional drilling over other options, despite knowledge of the high level of risk associated with the procedure.

8. AT&T's 1996 California violations were resolved by Stipulation re: Settlement (Request for Dismissal) approved by the Judge of the Mendocino County Courts, Municipal Court Division, on April 7, 1998.

B. MAINE

1. On January 12, 1996, AT&T Communications of New England, Inc., another subsidiary of AT&T Corp., submitted a Permit by Rule Notification Form to the Department of Environmental Protection of the State of Maine for permission to install a subterranean fiber optic cable through various stream beds and wetlands in that state. The drilling company retained for the project was Michels Pipeline Construction, Inc.

2. In August 1996, the Maine Department of Environmental Protection received complaints of environmental violations by AT&T Communications of New England, Inc. as a result of its permitted stream-crossing project there. The Maine Department met with AT&T to discuss the requirements of its permit. After conducting an inspection of four sites in the town of Searsmont on August 22, 1996, Maine DEP provided AT&T with specific guidance for bringing itself into compliance.

3. The Maine DEP conducted a further inspection of AT&T's sites on September 19, 1996, found that the violations noted in August remained uncorrected, and discovered new violations. AT&T was again given direction regarding required restorative action.

4. A notice of violation was sent to AT&T regarding its Maine project on October 1, 1996 after site inspections throughout the permitted route revealed numerous violations that remained uncorrected.

5. AT&T's violations of its Maine permit were not remediated to the Department's satisfaction until the end of December, 1996, and required the government to conduct ten additional inspections, including aerial inspections, across the state. An Administrative Consent Agreement and Enforcement Order between AT&T Communications, Inc., related entities, and the State of Maine was signed on October 15, 1997.

VI. DETERMINATION

Up to three million gallons of drilling mud were intentionally discharged by this Respondent into the Territorial waters of the Virgin Islands in Butler Bay adjacent to Plot 4A, Estate Northside, St. Croix by this Respondent. Further,

Respondent deliberately discharged diesel oil, hydraulic fluid, waste oil and/or other petroleum products into those waters. The discharge was not permitted. The discharge posed a substantial likelihood that the flora and fauna living and feeding in that marine environment, including hard bottom communities and coral reefs, would be exposed to harm and damage through suffocation, loss of food supply and ingestion of the mud and the petroleum products mixed with it.

Endangered and threatened species that were and continue to be potentially affected include the Hawksbill, Leatherback, and Green Sea Turtles, the Brown Pelican, the Roseate Tern, the Least Tern, and the White Tailed Tropic Bird. Queen conch, a commercially viable species, have been suffocated in the deposited drill mud. Further, the conch population is already under severe stress from over harvesting and the quantities of petroleum-laced mud that were released destroyed a large area of the limited conch habitat available on St. Croix.

The massive discharge of pollutants had or could have had a substantial adverse effect on the express purpose of the permitting scheme, which is "protect, maintain, [and] preserve . . . the overall quality of the environment in the coastal zone, [and] the natural and manmade resources therein . . . by managing [] the impacts of human activity and []the use and development of renewable and nonrenewable resources so as to maintain and enhance the long-term productivity of the coastal environment." The discharge has had a substantial adverse affect on DPNR's procedures for implementing the statutory scheme because it has required huge expenditures of resources and personnel over a period of two years to delineate and monitor the clean-up of the deposits of drilling mud as well as to determine the identification of the petroleum additives

and the mechanism by which the petroleum products were incorporated into the drilling fluid.

This adverse effect continues to date as a result of Respondent's refusal to delineate and clean-up areas of mud exposed outside of the two emergence zones and the frac-out, and its refusal to provide to DPNR the information it has requested on the drilling process and the use of drilling additives. Significant deposits of drilling mud remain at the site and are periodically uncovered by the forces of nature, such as Hurricane Georges, to interface with the water column. The deposits pose a continuing potential for release into Territorial waters.

Respondent has exhibited bad faith in its failure to comply with the Coastal Zone Management Act, its failure to comply with the Conditional Water Quality Certification granted for its cable facility project, and its failure to comply with the lawful Orders of this Department. Its violations of its CZM Permits for this project are legion. The bad faith continues to date in AT&T's refusal to remove all objectionable deposits of its drilling mud and its acts and omissions directed at obstructing the Department's ongoing investigation of its violations.

These were clearly willful violations. AT&T was in control of the job site, its representatives were on site at all times and, per the terms of the drilling contract, it had to approve all work. AT&T's On-site Representative prepared daily drilling reports and sent them by e-mail to its stateside divisions. The start of each new hole, the drill head emergences, the size of the holes, reaming and backreaming, loss of drilling mud returns, and delivery of additional mud to the site were all reported to AT&T. Rivers of drilling mud deposited on the ocean floor, smothering sea life in their paths, were videotaped by agents of Respondent. Respondent covenanted in the EAR to cease drilling in the face of

loss of drilling pressure. Reaming and back reaming the open bore holes meant that no pressure was maintained, but the drilling stopped only for equipment failures and to add more drill mud,

Respondent knew or should have known of the illegal discharges, failed to report any of them to DPNR at the time, and refuses to date to respond fully and truthfully to Requests for Information related to the discharges. In open violation of an Order from DPNR outstanding since December 12, 1996, Respondent has instructed its contractors not to comply with Requests for Information served on them directly.

Permittee's parent corporation and other subsidiaries thereof have displayed a pattern of noncompliance with permit terms, environmental laws, and reporting requirements on projects employing directional drilling and/or setting permit terms designed to protect valuable water resources in other geographic locations, including the states of California and Maine. These other instances, while not known to involve petroleum products, are similar to the violations here and reflect a corporate-wide indifference to environmental protection or to environmental law and regulations.

This Permittee never owned the property for which it obtained a development permit and from whence the illegal discharges emanated. Prior to the commencement of drilling, it relinquished to Transoceanic Communications, Inc., another wholly owned subsidiary of its corporate parent, the option to purchase the real property which supported its permit application. AT&T Corp., the corporate parent, contracted directly for the environmental monitoring required by the permit. Another subsidiary, AT&T Submarine Systems, Inc., contracted for the drilling and was the owner of the first cable laid. Respondent

has attempted to exploit its co-mingling of responsibilities in support of its professed inability to provide proper responses to the government's investigatory efforts. Further, the attempted shifting of responsibility could have left the Territory without recourse absent its diligent investigation.

Therefore, stringent enforcement action is reasonable. It is required to attain the goals and objectives of the Territory's regulatory program and to protect the public health and welfare and the environment of the United States Virgin Islands.

VII. ORDER FOR REMEDIAL ACTION

In consideration of the foregoing, you are hereby ordered to:

1. Immediately upon receipt of two (2) originals of this ORDER, a responsible official of AT&T must sign and date them on page 49 of this NOTICE OF VIOLATION and ORDER; one of the originals shall then be returned to the DPNR enforcement officer serving the ORDER;
2. Within seven (7) working days from receipt of this NOVA, AT&T shall submit final clean up and long term monitoring plans to CZM. These plans should reflect DPNR's comments and concerns.

VIII. NOTICE OF ASSESSMENT OF CIVIL PENALTY

Title 12 V.I.C. §913(c)(1) provides that any person who violates any provision of this chapter, or any regulation or order issued hereunder, shall be subject to a civil fine not to exceed ten thousand (\$10, 000) dollars.

Title 12 V.I.C. §913(c)(3) provides that in addition to any other penalties provided by law, any person who intentionally and knowingly performs any development in violation of this chapter shall be subject to a civil fine of not less than one thousand dollars nor more than ten thousand dollars per day for each day during which violation occurs.

The Department has found 2494 violations arising from AT&T's development of its fiber optic cable facility at Butler Bay, St. Croix. Violations of the Coastal Zone Management Act and Regulations and Orders issued pursuant thereto are documented above.

In view of the degree of seriousness of the violations involved, the willfulness of the violations, AT&T's bad faith, its history of noncompliance and other unique factors identified above, penalties in the total amount of \$23,373,150.00 have been calculated.

IX. RESPONDENT'S RIGHTS UPON RECEIPT OF NOVA

Pursuant to Title 12 V.I.R.R. §913-3(g), you have 30 days to:

- a) Accept the penalty by delivering or mailing within 30 days a cashier's check or money order made payable to the Department of Planning and Natural Resources in the amount accumulated.
- b) Seek to have this NOVA amended, modified, or rescinded under paragraph (2) of §913-3(g)(2) of the Virgin Islands Rules and Regulations.
- c) Request a hearing under paragraph (g)(5) of §913-3 of the Virgin Islands Rules and Regulations.
- d) Request an extension of time under paragraph (g)(3) of §913-3 of the Virgin Islands Rules and Regulations.
- e) Request an informal settlement conference.

- f) Take no action, in which case the NOVA becomes final in accordance with § 913-3(h).

XII. INQUIRES

Questions may be directed in writing to Cisselon S. Nichols, Esquire, Attorney General's Office, Department of Justice, 48B-50C Kronprindsens Gade, St. Thomas, U.S.V.I. 00802, with a copy to John K. Dema, Esquire, Law Offices of John K. Dema, P.C., 1236 Strand St., Suite 103, Christiansted, St. Croix, U.S.V.I. 00820.

SO ORDERED THIS 31st DAY OF DECEMBER, 1998.



Beulah Dalmida-Smith, Commissioner
Planning and Natural Resources

RECEIVED BY

DATE

RECEIVED BY

DATE

Exhibit 3